

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

BASF CATALYSTS LLC,

Plaintiff,

V.

UNITED STATES OF AMERICA, et al.,

Defendants.

**Civil Action No. 05-11241-JLT**

*(Electronic filing)*

## STIPULATION

THIS STIPULATION is between the United States of America (“United States”) and BASF Catalysts, LLC (“BASF”) (collectively the “Parties”), and is a legally binding agreement between the Parties as of the date it is filed with the Court.

WHEREAS, in this case, BASF has asserted claims against the United States under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-75, and the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-92k, pertaining to the Site, which includes an area of approximately 18.3 acres at 32 Taunton Street (on the west of State Route 152) in Plainville, Massachusetts, where Plaintiff owned and operated a manufacturing facility.

WHEREAS, the Parties wish to establish a period of time in which to engage in further efforts to resolve the pending litigation, without the complication and burden associated with the filing of claims by the United States against BASF.

NOW, THEREFORE, the Parties hereby agree and stipulate as follows:

1. Except with respect to claims filed or administrative actions taken by the United

States after August 31, 2008, BASF shall not assert in this case, or any other case or administrative proceeding, that any claim or administrative action by the United States related to the Site (including, but not limited to, efforts by the United States to recover CERCLA response costs or natural resource damages) is precluded by the rules pertaining to merger and bar, res judicata, or Federal Rule of Civil Procedure 13(a), or any similar rule or regulation, and shall make no defense or avoidance based on such argument.

2. This Stipulation shall not preclude BASF, with respect to any claims filed or administrative actions taken by the United States related to the Site after August 31, 2008, from pleading or otherwise asserting any defenses it may have to such claims or actions, including, without limitation, the defense that such claims or actions are precluded because the claims or actions were not raised in this Action consistent with Federal Rule of Civil Procedure 13(a) or any similar rule(s) or regulation(s) (including, without limitation, the rules pertaining to merger and bar).

3. Nothing in this Stipulation shall be construed as an admission of any issue of law or fact by BASF or the United States.

4. Nothing in this Stipulation shall be construed to limit the authority of the United States to undertake any action pursuant to applicable law or regulation. This Stipulation in no way affects or relieves any Party of its responsibility to comply with any federal, state, or local law or regulation. Except as specifically provided herein, nothing in this Stipulation alters the rights and/or liabilities of the Parties with respect to any claims that have been or may be filed in this case.

5. This Stipulation represents the entire agreement between the Parties regarding the

timing of the assertion of defenses by BASF that are based on the rules pertaining to merger and bar, or Federal Rule of Civil Procedure 13(a), or any similar rule or regulation, with respect to claims filed or administrative actions taken by the United States. This Stipulation may not be enlarged or altered except in a written instrument signed by both Parties.

The undersigned representative of each Party certifies that he is fully authorized to enter into the terms of this Stipulation and to legally bind such Party to this document.

Respectfully submitted,

**FOR THE UNITED STATES:**

RONALD J. TENPAS  
Acting Assistant Attorney General  
Environment & Natural Resources Division

Dated: April 29, 2008

/s/ Stephen E. Crowley  
STEPHEN E. CROWLEY  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Tel: (202) 514-0165  
[Stephen.Crowley@usdoj.gov](mailto:Stephen.Crowley@usdoj.gov)

MICHAEL J. SULLIVAN  
United States Attorney  
District of Massachusetts

ANTON P. GIEDT  
Assistant U.S. Attorney  
1 Courthouse Way  
Boston, MA 02210  
Tel: (617) 748-3309  
Fax: (617) 748-3967  
[anton.giedt@usdoj.gov](mailto:anton.giedt@usdoj.gov)

*Attorneys for the United States*

**FOR PLAINTIFF BASF CATALYSTS LLC:**

Dated: April 29, 2008

/s/ Paul R. Mastrocola  
Paul R. Mastrocola  
David P. Rosenblatt  
Burns & Levinson  
125 Summer Street  
Boston, MA 02110  
[pmastrocola@burnslev.com](mailto:pmastrocola@burnslev.com)  
[drosenblatt@burnslev.com](mailto:drosenblatt@burnslev.com)

Ronald L. Kuis, Esq.  
12 Scenery Road  
Pittsburgh, PA 15221  
[rlkuis@aol.com](mailto:rlkuis@aol.com)  
(412) 731-7246

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of April 2008, a true and accurate copy of the foregoing Stipulation was filed electronically with the Court's CM/ECF system, which automatically notifies the below counsel of record of the filing, via e-mail, as follows:

Ronald L. Kuis, Esq.  
[rlkuis@aol.com](mailto:rlkuis@aol.com)

Paul R. Mastrocola  
David P. Rosenblatt  
[pmastrocola@burnslev.com](mailto:pmastrocola@burnslev.com)  
[drosenblatt@burnslev.com](mailto:drosenblatt@burnslev.com)

/s/ Stephen E. Crowley  
Attorney for the Defendants